

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs February 5, 2008

STATE OF TENNESSEE v. MATTHEW MASON

Appeal from the Circuit Court for Bedford County

No. 15,473 Lee Russell, Judge

No. M2007-01307-CCA-R3-CD - Filed May 29, 2008

Appellant, Matthew Mason, pleaded guilty in Bedford County to burglary, theft over \$10,000, evading arrest, and theft under \$500. Appellant was sentenced to an effective sentence of seven years. As a result of a plea negotiation, Appellant was ordered to serve 365 days in jail, one year on community corrections with the remainder on supervised probation. Appellant successfully completed both his jail time and time on Community Corrections. However, he attempted suicide by taking three ecstasy pills and twenty Xanax pills. This resulted in the revocation of his probation and the trial court's imposition of the service of the balance of his sentence in incarceration. Appellant now appeals the trial court's actions. We find ample support in the record for the revocation of Appellant's probation and the imposition of incarceration for the balance of his sentence. Therefore, we affirm the decision of the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court is Affirmed.

JERRY L. SMITH, J., delivered the opinion of the court, in which JOSEPH M. TIPTON, P.J., and DAVID H. WELLES, J., joined.

Andrew Jackson Deering, III, Assistant Public Defender, Shelbyville, Tennessee, for the appellant, Matthew Mason.

Robert E. Cooper, Jr., Attorney General and Reporter; Sophia S. Lee, Assistant Attorney General; Mike McCowen, District Attorney General; and Michael D. Randles, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

On April 1, 2004, Appellant pled guilty to burglary, theft over \$10,000, evading arrest, and theft under \$500. He received a total effective sentence of seven years. As a result of plea negotiations, Appellant was ordered to serve 365 days in jail followed by one year on Community

Corrections, after which, Appellant was to serve the balance of his sentence on supervised probation. Appellant completed his 365 days in jail on January 3, 2005, and he completed his year on Community Corrections on January 3, 2006. On November 30, 2006, he admitted he needed help for drug use and was referred to a counselor for alcohol and drug assessment. In the counselor's assessment received on February 6, 2007, he recommended that Appellant attend a drug and alcohol education program. Appellant never attended the classes.

Appellant unsuccessfully attempted to commit suicide by taking both ecstasy and Xanax. On April 4, 2007, Appellant signed a drug screen waiver admitting to taking three ecstasy pills and twenty Xanax pills. On April 5, 2007, Appellant's probation officer filed a probation violation report. In that report, the probation officer alleged that Appellant had violated Rule #8, "I will not use intoxicants (beer, whisky, wine, etc.) of any kind to excess, or use or have in my possession narcotic drugs, or marijuana."

The trial court held a hearing on April 20, 2007, on the probation violation. At the conclusion of the hearing, the trial court revoked Appellant's probation and ordered him to serve the balance of his sentence in incarceration. Appellant filed a timely notice of appeal.

ANALYSIS

Appellant's sole issue on appeal is that the trial court erred in ordering Appellant to serve the balance of his sentence. Appellant argues instead that the trial court should have ordered split confinement followed by mandatory inpatient drug treatment. The State argues that the evidence was sufficient to support the trial court's revocation of probation and imposition of service of the balance of Appellant's sentence.

A trial court may revoke probation and order the imposition of the original sentence upon a finding by a preponderance of the evidence that the person has violated a condition of probation. T.C.A. §§ 40-35-310 & -311. After finding a violation of probation and determining that probation should be revoked, a trial judge can: (1) order the defendant to serve the sentence in incarceration; (2) cause execution of the judgment as it was originally entered, or, in other words, begin the probationary sentence anew; or (3) extend the probationary period for up to two years. *See* T.C.A. §§ 40-35-308(c) & -311(e); *State v. Hunter*, 1 S.W.3d 643, 647-48 (Tenn. 1999). The decision to revoke probation rests within the sound discretion of the trial court. *State v. Mitchell*, 810 S.W.2d 733, 735 (Tenn. Crim. App. 1991). Revocation of probation and a community corrections sentence is subject to an abuse of discretion standard of review, rather than a de novo standard. *State v. Harkins*, 811 S.W.2d 79, 82 (Tenn. 1991). An abuse of discretion is shown if the record is devoid of substantial evidence to support the conclusion that a violation of probation has occurred. *Id.*

Appellant signed a drug testing waiver and admitted to taking three ecstasy pills and twenty Xanax pills. Clearly, taking these pills was in violation of Rule #8 of his probation. As stated above, after finding a violation of probation and determining that probation should be revoked, a trial judge can order the defendant to serve the sentence in incarceration. The record supports the trial

court's imposition of the service of the balance of Appellant's sentence in incarceration. Appellant had already been given an opportunity at split confinement with 365 days in jail and one year in Community Corrections prior to the beginning of his probation. Moreover, he did not attend a drug program as recommended to him. We find no abuse of discretion on the part of the trial court in either revoking Appellant's probation or ordering the service of the remainder of Appellant's sentence in incarceration.

CONCLUSION

For the foregoing reason, we affirm the judgment of the trial court.

JERRY L. SMITH, JUDGE